VIRGINIA LAW REGISTER

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A Fraternity House Not a Private Residence.

The New York Supreme Court has decided in the case of Vought *v.* Bliss—not yet reported—that the occupancy of a private residence by a college fraternity was a breach of a covenant that such house should be used as a private house only. The facts in the case seem to be these: Mrs. Bliss rented her houses on Andrews Avenue in New York City to two fraternities—Nu Upsilon and Phi Gamma Delta. Mrs. Vought complained that the members of the chapter conducted themselves noisily; that they never seemed to have any idea of bedtime, and that she, her family, and her visiting friends were frequently annoyed by the boys.

Mrs. Vought's home is next door to the fraternity house. With her complaint concerning the behavior of the boys, she said that the renting of the house to them was a violation of the restrictions made by the university itself.

A great deal of the property in the neighborhood was originally owned by the university, and to keep the character of the neighborhood great care was taken to exclude everything that might prove objectionable. One of the restrictions was that the buildings erected on the property should be used as private residences. The complaint said that the use of one of these buildings as a clubhouse took it outside this particular restriction, for a clubhouse could not be considered a private residence.

Mrs. Bliss insisted that the house used by the fraternity was a private abode because the members of the fraternity "eat there, study there, and in every respect use it as a private residence." Prof. Bliss also made an affidavit in which he said:

"The residential character of the neighborhood and street is in no way damaged by the occupancy of a distinctly private

residence by a family of boys living under one set of housekeeping arrangements, using the house solely as a residence and for purposes that might arise in any large family occupying a suburban residence as to house parties, dances, and entertainments of a social nature."

In this reply the professor covered many points in the complaint of Mrs. Vought. In the matter of the university's restrictions the professor said:

"When the university made the restrictions it never expected them to work against fraternities, which are only associations for families of boys closely connected with the university interests. The university did not consider that the sale of property to fraternities for building purposes in any way destroyed the residential character of the street. They urged the Psi Upsilon Fraternity to complete its purchase and encouraged the Zeta Psi Fraternity to erect a large clubhouse. The restrictions are intended to bar out only apartment houses, two-family houses, stores and other business buildings."

To show that the use of the house for fraternity purposes had not injured the value of property in the neighborhood. Prof. Bliss said that Dr. W. T. Hornaday of the Bronx Zoölogical Park bought a house adjoining a fraternity house and that he was on terms of intimacy with the owners. Other distinguished persons had bought property in the near neighborhood of the fraternity houses, the professor said.

To offset this statement, affidavits were submitted by owners of property near the Phi Gamma Delta house, saying that it had lowered the value of their holding. Another defense to the suit was that Mrs. Vought knew the character of the neighborhood when she bought her house. In granting the injunction asked for by Mrs. Vought, Supreme Court Justice Lehman said:

"I find that while the young men who are members of the fraternity and occupy the house have at all times conducted themselves in a proper manner and have caused the plaintiff no damage other than that which is inseparable from the use of the premises as a fraternity house, yet such occupancy itself constitutes a breach of the covenant that the premises shall be used as a private residence only. The words 'a private residence' cannot be extended so as to permit the occupancy of

the house by an association of young men, not connected by family ties, for dwelling or social purposes, however closely the admission to such association may be restricted."

It seems to us that this decision is very far reaching and hardly to be justified by the proper use of words. Does a "private residence" mean a residence in which only reside members of the same family? Judge Lehman's opinion seems to indicate this. Then two gentleman, unconnected by family ties, or two ladies desiring to live together could not rent and occupy a dwelling house together without making the house lose its character as a private residence. If two gentlemen or ladies unconnected by family ties could thus rent a house—and we cannot believe it would thereby lose its character as a private residence—why could not ten or twenty young men connected by the ties of a fraternal organization rent a dwelling and occupy it as their private residence? They did not allow any other person to live in the house than members of their own brotherbood. It was certainly a private residence in that sense of the word. We do not believe this decision good law or good sense, based upon the grounds upon which Judge Lehman decided it.

The Simplification of the Administration of Justice.

The following act was approved March 27th, 1914: "An act to simplify and expedite the administration of justice in this State by the elimination of useless technicalities and vexatious delays and permitting amendments under certain conditions in causes hereafter instituted.

"Be it enacted by the general assembly of Virginia, That in any suit or action hereafter instituted, the court may at any time, in furtherance of justice, upon such terms as may be just, permit any proceeding or pleading to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

That this act is a step in the right direction cannot for one

moment be called in question. A grave and serious objection, however, is that it allows each judge in the State to set his own particular ideas as to what may be just, and we may therefore soon have in every circuit in the State an entirely different rule of practice. One judge may permit an amendment upon certain terms, liberal or otherwise, which to a judge in another circuit may seem entirely too liberal or too harsh, and the difficulties that will confront the Supreme Court of Appeals in passing upon the rules adopted by the judges in the different circuits will be exceedingly great and it will take years and multitudinous decisions to arrive at what may be just.

The peremptory direction in the last clause of the act that the court must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties, seems to us also a grave defect and open to many objections. For the same reason that the substantial rights may appear to one judge much different from those which may appear to another, and the act practically puts the law back in the old condition in which the equity proceeding was once said to be—measured by the length of the Chancellor's foot.

At the same time we believe that the ultimate result of the act will be for good, but it is to be exceedingly regretted that the General Assembly did not take up the whole matter of reform in legal procedure and devise some plan by which it could be simplified and deprived of the useless technicalities which now mar the administration of justice.

Eugenical Legislation.

The gradual attempts to regulate everything on the face of the earth by law continues its steady march. We may expect in the course of a few decades statutes providing upon which side we must sleep and the kind, quality, thickness and texture of our underwear, not to speak of the length, breadth and thickness of our pajamas. Eugenic marriages have been the subject of legislation in various of the states and now the Supreme Court of Wisconsin has upheld the law of that State on this subject. The opinion was written by Chief Justice J. B. Winslow. The chief argument advanced against the law was that it was discriminatory, in that it compelled male applicants

for marriage licenses to undergo physical examination, while the law was not made to apply to female applicants. The court finds no merit in this argument.

"Classification," says the court, "is not to be condemned because there may be occasional instances in which it does not fit the situation. It is proper if the great mass of situations to which the law applies justify the formation of a class."

The court maintained that the law required only such examination as the ordinary medical practitioner could make. The court reversed the judgment of the Milwaukee County Circuit Court, which declared the law invalid.

Alfred A. Peterson, Milwaukee, was unable to obtain a license in last January because of failure to present a medical certificate. Peterson then began the action to test the constitutionality of the measure.

The law prescribed a fee of $3 to physicians. In the case of Peterson it was shown that four physicians refused to make the examination on the ground that the fee was insufficient to carry out what they thought were the requirements of the law.

We feel sorry for Peterson and suggest that he and his girl move to Virginia, but move promptly. We may expect a similar statute here in the course of a few years. And then when we are deprived of our juleps (thank heaven, cider will still remain with us!) and only the perfect man and woman are allowed to *marry;* when "red light districts" with all their accompaniments have vanished before the pure white light of legislation; when wise statutes drawn by Solomonic Solons, regulate us in every detail of our daily walk and conversation then the Millenium Dawn will appear and we will be all so good that even legislators will be abolished and reformers cease to reform. For some of these reformers this state of things would be worse than death.

The Law and the Press.

It is to be sincerely hoped that those who read the editorials in the REGISTER will not think that the Editor has "gane daft," on the subject of newspapers in connection with publication therein upon trials and legal matters. The fact is that the Editor is not alone in his views upon the dangerous lengths to which such publication is carried. The Attorney General of

the United States in an admirable address delivered before the Tennessee Bar Association on June 12th upon "The Government's LAW Business" said that one of his most arduous and disagreeable duties was to superintend the publicity of the work of the Administration of which he was a part, so that the people might know what the Government was doing.

"Those not in direct touch with the situation have no idea to what extent certain portions of the press will go to misrepresent the work of the various departments at Washington in order to subserve their own interests," he said.

This situation, he predicted, would soon present one of the most serious problems for the best statesmen of the coming Administrations to solve.

When the head of the Legal Department of this great Government speaks of such publications as presenting a serious governmental problem, we cannot but think that the subject is one demanding the sober consideration of all patriotic citizens. The duty lies upon the members of the legal profession to devise some means of checking this growing evil—not so much by proposed legislation as by wise counsel and stern repression. The unfortunate tendency of the present age is a desire for newspaper notoriety. It is the most natural thing in the world for a young barrister to desire his name to appear in the journals as a winner of cases and many of the older ones are not adverse to this kind of notoriety. Men have been known to "write themselves up" in connection with cases which the reporters desired to have. This habit has led to grave abuses, as in the Becker case, where the District Attorney actually wrote out his opening address and gave it to the journals in advance of its delivery, to be "released" after it was made. As alluded to in our last number, it "escaped" and came out with many comments before it was delivered. The Bar Association of Illinois has taken the matter of newspaper notoriety for lawyers in a decidedly drastic fashion and it is now in that State unethical for a lawyer to make a statement for publication in a newspaper, concerning a case in which he is engaged, or to give out his plan of procedure. The resolution which was passed by that Association makes it an offense punished by a fine and penalty for a lawyer to allow an interview concerning his case to appear in a news-

paper. A clause in the resolution sets out the fact we have so often insisted upon that the publicity given to trials and suits at law often prevents justice.

Nor is ours the only learned profession which is the victim of exaggerated, misleading and actually false statements as to proceedings in courts. It is as to an ecclesiastical court this time that such statements were made. The moderator of the Presbytery of New York complains in a letter of admirable taste and temper, published in the *New York Times*, as to the way that Assembly was treated by the press. Six false statements in twelve sentences he shows were made and one person's objection to a report—otherwise unanimously adopted—was made in sensational headlines to appear as a perfect storm of protest. "The Presbytery was torn by heresy charges," was the charge in enormous headlines. A young candidate's doubt as to the way to reconcile the statement in the New Testament that "no man hath seen God" with the account in the Pentateuchs of Moses talking face to face with God, was magnified into a perfectly fearful thing which imperilled his ordination—an absolutely untrue statement. Dr. MacCracken's conclusion upon this statement is too good to be lost in a newspaper file. He said:

> "A word as to the theology underlying this whole business. An ancient difference exists, and will always exist, between an extreme literal method of reading Scripture and a genuine understanding of the same. May I illustrate? Should the Presbytery of New York arraign the reporter who wrote this libel and convict him of lying, the literal reader of the Bible could quote the Book of Revelation, 'All liars shall have their part in the lake which burneth with fire and brimstone,' and could logically insist on this exact doom for the convicted reporter. Just so the literalist who forms his own decided notion of how Moses 'saw God' would ask the Presbytery of New York to condemn as heretical the student who doubts whether Moses saw God in a literal way. The Presbytery of New York is today less concerned with such questions than we are in finding ways to win young men to the company of the pure in heart, to whom the promise is made, without any mention of either optical or psychological details, 'They shall see God.'"

So outraged was the learned gentleman by these sensational

and false reports, tending to wound and iniure young men earnestly seeking after truth and who have been indorsed by a practically unanimous tribunal, that he recommended the barring out of irresponsible reporters from the deliberations of the church councils.

As we have shown in former articles, England has a drastic and prompt method of dealing with newspapers which attempt to usurp the functions of courts and juries or which publish articles on pending cases liable to injure the cause of justice. A late number of the *London Law Journal* contains the following article, which shows the British opinion on this subject:

"Most people, we imagine, will agree that the Divisional Court, in imposing a fine of $100 upon the editor of *Lloyd's Weekly News* for publishing an affidavit by Mrs. Starchfield whilst an indictment for murder was pending against her husband, punished none too severely a peculiarly objectionable form of contempt of court. If this comparatively small fine does not serve to discourage the increasing process of trial by newspaper, the warning uttered by Mr. Justice Darling will, it may be hoped, achieve that desirable result.

" 'We have come to the conclusion that if this process of trial by newspaper continues after the warning which has been given, the Court will be bound to inflict imprisonment, and will not shrink from doing it. The disadvantage to the public is enormous, and people must be prepared to suffer a severe penalty if they interfere with the course of justice and set themselves up as a tribunal for trying cases in which His Majesty's subjects are involved.'

"These are timely words, and the Court, whenever it has occasion, will, it may be hoped, act upon them. There are certain newspapers, sometimes spoken of ironically in 'Sunday papers,' which make it a practice, whenever a sensational crime has been committed, to pander to morbid curiosity by the most irregular means. They try to usurp the functions of the judicial tribunals of the land, or at least to anticipate their exercise, without, apparently, the slightest regard for the elementary interests of justice. Not only is imprisonment the fitting punishment for this grave interference with the administration of the law; it has already been imposed. At the Bristol Assizes, in 1901, the then editor of the *Weekly Dispatch,* with a con-

tributor who styled himself 'a special crime investigator,' was sentenced to six months' imprisonment for attempting to pervert the course of justice in the Allport case, which, since it was concerned with felony and not with murder, involved far less serious issues than did the Starchfield trial. It is not merely that the class from which jurymen are drawn may be affected by these irregular statements and pictures in the Press; the whole value of the identification of prisoners is often destroyed by them. The recent growth of illustrations in the Press has resulted in an increasing interference with the functions of the Courts, and the judges, it must be confessed, have been somewhat timid in dealing with so mischievous a scandal. It is high time that they sternly suppressed it."

General Laws Enacted at 1914 Session of the Virginia General Assembly.*

We notice that the printer, the stenographer, or some evil genius has made the year 1912 on page 153. Of course we meant "Laws Enacted at the Session of 1914," which we now continue from that list, which ended with page 608 of the Acts of 1914.

P. 627. An Act relating to and providing for the incorporation of co-operative associations.

P. 640. An act repealing the act of May 5th, 1903, in regard to the manner in which a county or state treasurer could secure final discharge from the liability and making the Statute of Limitations for suits or actions against such treasurers their heirs or representatives or sureties three years after the Commissioner of Accounts had settled such treasurer's accounts and the same had been confirmed, and further providing that no suit or action should be brought against such treasurer's heirs, representatives and sureties where the term of office of such treasurer had heretofore expired, for any taxes, levies, etc., received by him, unless suit was instituted before July 1st, 1915.

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*Continued from page 153.

P. 641. An act upon which we have editorially commented, printed in full in this number, entitled "An Act to Simplify and Expedite the Administration of Justice," etc.

P. 642. An act covering nearly thirteen pages, amending the various acts in regard to ditching and draining the wet, swamp and overflowed lands of the State.

P. 665. Compelling ventilation in foundaries or moulding shops.

P. 665. An act to provide for the immediate admission without an order of commitment into state hospitals, persons who are in urgent need of immediate treatment and care, or who are dangerously insane. This is an act providing for emergency cases, but what might prove a very grave and serious danger is duly guarded against by providing for regular proceedings after the insane or dangerous person is committed, which commitment can be made upon a certificate of insanity executed by two physicians.

P. 667. Amending § 814, Code of Virginia, and the acts amending the same, in regard to the bonds of county officers.

P. 671. An act regulating the employment of children in factories, etc., as messengers or in selling or distributing newspapers, etc. The age for a child's employment in factories, work-shops, mercantile establishments, etc., is put at fourteen years, and such employment is prohibited during school hours or after 7 o'clock, p. m., in the distribution, transmission or sale of merchandise. No child under sixteen years of age is allowed to work in any of the occupations named in the act for more than ten hours in one day for six days in the week, nor before the hour of seven in the morning or after 9 o'clock in the evening. Employers of child labor are required to obtain certificates as to the age of the children they employ and to keep two complete lists of the names and ages of children under sixteen years of age employed by them, one on file and one

posted near the principal office of the factory, shop, etc. In cities having a population of 5000 or more no child under the age of fourteen years can work as a messenger for telegraph, telephone or messenger companies in the distribution, transmission or delivery of goods, messages, etc., and no child under eighteen years of age can be so employed, permitted or suffered to work between the hours of 10 o'clock in the evening and 5 in the morning. No boy under ten or girl under sixteen in such a city can distribute, sell, expose or offer for sale newspapers or periodicals in any street or public place. Parents, however, are allowed to work their own children in any factory, etc., owned by the parent, nor does the act apply to persons employed in factories exclusively occupied in packing fruits and vegetables between July 1st and November 1st. The act does not apply to mercantile establishments in towns of less than 2000 inhabitants. The circuit or corporation courts are allowed to release any child between the ages of twelve and fourteen from the operations of the act on the petition of the parent, guardian or other person interested in such child.

P. 673. An act imposing public duties on heat and light power, water and telephone companies and placing them under the control and regulation of the State Corporation Commission.

P. 681. An act providing for the establishment on the land of the Central State Hospital in the County of Dinwiddie a colony for feeble-minded persons and providing for their commitment, examination and furlough.

P. 691. An act amending and re-enacting § 3504 of the Virginia Code, as amended December 31st, 1903, in regard to the fees of county clerks and clerks of the Court of Appeals.

P. 696. A very admirable act providing for the commitment of delinquent, dependent or neglected children to the

State boards of charities and corrections, and to certain societies, associations, etc. This act refers the whole question of the proper method of caring for delinquent children and defining what a delinquent child is. We believe that if properly administered it will work a vast deal of good.

P. 707. An act establishing a commission to look into the so-called fee system.

P. 737. An act amending § 3470 of the Code of 1887 relating to bonds of appellants or petitioners.

This completes our brief summary of the Acts of 1914 as far as we think they are of general interest. We must confess as we examine the 736 pages, to a keen sense of disappointment at much of the legislation, which either failed on account of want of time or proper consideration on the part of the General Assembly. The body had a large number of new members and the work of law-making was hampered somewhat for this reason, but it is sincerely to be hoped that a sufficient number of members of the present Legislature may return in order that knowing the ropes they may be able to pull them better for much-needed legislation.

The Supreme Court of Appeals in Session at Wytheville.

The Supreme Court of Appeals of the State assembled promptly on the first Tuesday in June and have been busily engaged up to the time REGISTER goes to press. If any one has any idea that this body is not worked for all it is worth he should examine the lists of opinions and of appeals and writs of error granted and refused, which was handed down the first opinion day of the court. A mere recital of the names of causes covered over a page and a quarter of fine print in the Richmond *Times-Dispatch*. The editor attempted to enumerate them, but the weather was so hot that he gave it up in despair. Sufficient to say that the amount of work done as evidenced by this list must fill one with amazement when we realize that only five judges are able to do what they do.